

Applicant : Stefan Gabriel et al.  
Serial No. : 10/046,290  
Filed : January 16, 2002  
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Attorney's Docket No.: 00167-434001 / 02-31-0352

### REMARKS

Applicant would like to thank the Examiner for the telephone interview conducted with Applicant's representatives, Kevin Greene and Phyllis Kristal, on December 29, 2003. During the course of the telephone interview, the following remarks were discussed. The Examiner also expressed his willingness to further consider these remarks in detail and to contact the representatives after doing so.

Claims 1-16, 19-21 and 23-38 are pending in the application, with claims 1, 19, 20, 21, 26, and 31 being independent. The Examiner has found claims 1-16, 19, 20, 35, and 37 allowable. Applicant notes that the office action summary also indicates that claim 34 is allowable, but the Examiner did not address this claim in the office action. Additionally, the Examiner has found that claim 25 contains allowable subject matter, but has objected to the claim as being dependent on an unallowable base claim.

Claims 21, 23, 24, 26-33, 36 and 38 have been rejected as anticipated by U.S. Patent Application 2002/0128684 (Foerster). Reconsideration and allowance of these claims are respectfully requested in light of the following remarks.

Initially, Applicant notes that claim 33 has been rejected even though claim 33 is dependent on an allowed claim (claim 1). Given the Examiner's comments in the office action, it would appear that the rejection of this claim is an oversight and that it should have been allowed. Applicant respectfully requests that this rejection be withdrawn.

Claim 21 is directed to a tissue anchor insertion *tool* including an applicator, and claim 26 is directed to a method that includes providing an insertion *tool* including an applicator, and inserting a tissue anchor into tissue using the insertion tool.

The Examiner's rejection equates a toggle ring 572 of Foerster with the claimed applicator. However, toggle ring 572 is not part of Foerster's insertion tool. Rather, toggle ring 572 is part of Foerster's anchor. Therefore, for at least these reasons, claims 21, 23, 24, 26-30, and 36 are patentable over Foerster.

Independent claim 31 is directed to an arthroscopic method that includes inserting a tissue anchor into tissue; and engaging an applicator to deflect the applicator such that the applicator rotates the tissue anchor during deployment of the tissue anchor into tissue.

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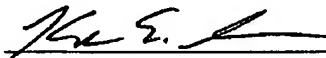
Foerster's toggle ring 572 does not rotate the anchor during deployment. While toggle ring 572 is deflected during deployment of the anchor 546 into tissue, the deflection does not rotate the anchor. Therefore, for at least these reasons, claims 31, 32, and 38 are patentable over Foerster.

With respect to independent claims 1, 19, and 20, Applicant notes that these claims are allowable over Foerster because, as discussed above, Foerster's insertion tool does not include toggle ring 572, which the examiner equates to the claimed applicator.

Applicant asks that all claims be allowed in view of the foregoing remarks. Please apply the Extension of Time Fee and any other charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: 1/16/04

  
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